



**E**

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**Exhibit E**

**South Carolina Public Service Commission Order  
Granting Certificate of Public Convenience and Necessity to  
Snap Telecommunications, Inc. (then "USA Video Relay, Inc.")**

interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. The Commission received one Petition to Intervene regarding the Application from the SC Telephone Coalition ("SCTC").

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until USAVR provides written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. USAVR also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. USAVR agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met.

A hearing was commenced on February 3, 2005 at 2:30 p.m. in the Commission's Hearing Room. The Honorable Randy Mitchell, Chairman, presided. Philip Murphy, Esquire represented the Applicant. Florence P. Belser, Esquire, General Counsel and Wendy B. Cartledge, Esquire, represented the Office of Regulatory Staff. Mr. Daryl Crouse, the President of USA Video Relay, Inc., appeared and testified in support of the Application.

The record reveals that Mr. Crouse described the nature of USAVR's proposed service offerings within the State of South Carolina. Additionally, Mr. Crouse presented testimony to demonstrate the Company's financial, managerial, and technical ability to provide video relay services and telecommunications services, for which authority is sought in South Carolina. Mr. Crouse also presented testimony regarding his background and experience in business and telecommunications. Mr. Crouse's testimony and exhibits filed with USAVR's petition evidence that the company is on sound financial footing to begin operations in South Carolina.

According to the testimony, USAVR is a corporation, originally organized under the laws of South Carolina on August 5, 2004. USAVR's corporate headquarters are located in Charleston, South Carolina. The Company sought authority to operate as a reseller of local exchange and interexchange telecommunications services to the public on a statewide basis. The Company wishes to provide video relay services to the public. As a part of this service, USAVR proposes to offer resold traditional switched long distance services and toll-free services.

Mr. Crouse testified that USAVR will operate in compliance with all applicable statutes, regulations, and Commission orders. Further, Mr. Crouse offered that approval of USAVR's Application serves the public interest by increasing telecommunications competition in South Carolina, thereby bringing about lower rates, improved quality of service, and enhanced services. Mr. Crouse also offered that approval of USAVR's Application serves the public interest by increasing access to functionally equivalent telecommunications services through video relay, a form of enhanced relay services. Mr.

concerning their bills. Customer service agents will be available 24 hours a day 7 days a week. The Company's customer service department is also available by e-mailing [customerservice@usavideorelay.com](mailto:customerservice@usavideorelay.com).

Regarding the Company's financial resources, Mr. Crouse testified that USAVR has sufficient financial capability to provide the requested telecommunications services in South Carolina and has the financial capability to maintain these services. In addition, Mr. Crouse described USAVR's access to a leased line of credit and to working capital through a relationship with Flexible Funding in California which provides USAVR with a forty-five (45) day invoice in the factoring and financing of USAVR's invoices. Mr. Crouse stated that USAVR will market its services in South Carolina using television, newspaper, and in-house representatives. The testimony reveals further that USAVR will at all times provide and market services in compliance with current Commission policies. In particular, the Company is familiar with Commission Order No. 93-462 regarding resale of telecommunications services and will attempt to comply with the terms of that order in every respect possible. The Company does not intend to use telemarketing in connection with its services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. The Company is a corporation duly organized and existing under the laws of the State of South Carolina, and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. The Company wishes to operate as a reseller of local exchange and interexchange telecommunications services to the public in South Carolina.

3. The Company's headquarters are located in the City of Charleston and the Company is in good standing with the South Carolina Secretary of State's Office.

4. The Company has the managerial, technical, and financial resources to provide the services as described in its Application.

5. The Commission finds that the USAVR provision of service will not adversely impact the availability of affordable local exchange service. S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

6. The Commission finds that USAVR will support universally available telephone service at affordable rates.

7. The Commission finds that USAVR will provide services which will meet the standards of the Commission.

8. The Commission finds that the provision of local exchange service by USAVR does not otherwise adversely impact the public interest. S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2004).

9. We find that the issuance of the authority requested by USAVR is in the public interest of the citizens of the State of South Carolina.

#### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to USAVR to provide competitive intrastate resold and non-facilities-based local exchange service in the areas of South Carolina served by ILEC's which are not under the rural exemption of the 1996

Telecom Act. The terms of the Stipulation between USAVR and the SCTC are approved *and adopted as a part of this Order.* Any proposal to provide services to rural service areas is subject to the terms of the Stipulation. In addition, USAVR is granted authority to provide resold and facilities-based intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other service authorized for resale by tariffs of carriers approved by the Commission.

2. USAVR shall file prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with ORS and comporting with South Carolina law in all matters. USAVR's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communication by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for USAVR's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, USAVR's local exchange service filings are presumed valid upon filing, subject to the investigation of the tariff filings, and will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of USAVR which is consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-173 and 96-55 in Docket

No. 95-661-C. Under the Commission approved alternative regulation, the business service offerings of USAVR are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order. Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven (7) days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to USAVR.

4. With regard to the interexchange residential service offerings of USAVR, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).



5. USAVR shall not adjust its interexchange residential rates below the approved *maximum level without notice to the Commission and to the public*. USAVR shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

6. If it has not already done so by the date of issuance of this Order, USAVR shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. USAVR is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's offering of interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. USAVR shall resell the services of only those interexchange carriers or *LECs authorized to do business in South Carolina by this Commission. If USAVR changes underlying carriers, it shall notify the Commission in writing.*

10. With regard to the origination and termination of toll calls within the same LATA, USAVR shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph four of the Stipulation and Appendix B approved by Order No. 93-462.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide in writing to the Commission and to the Office of Regulatory Staff the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

USAVR shall file the names, addresses and telephone numbers of these representatives with the Commission and with the Office of Regulatory Staff within thirty (30) days of receipt of this Order. The Company shall utilize the "Authorized Utility Representative Information" form which can be located at the Commission's website at

[www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp) to file the names of these representatives with the Commission and the Office of Regulatory Staff. Further, the Company shall promptly notify the Commission and the Office of Regulatory Staff in writing if the representatives are replaced.

12. USAVR shall conduct its business in compliance with Commission decisions and Orders, both past and future.

13. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs USAVR to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, USAVR shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

14. USAVR is required to make certain reporting filings with the Commission and with the Office of Regulatory Staff. USAVR shall file annual financial information in

the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, USAVR shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp) . The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission and the Office of Regulatory Staff by April 1<sup>st</sup> of each year.

Commission gross receipts forms are due to be filed with the Commission and the Office of Regulatory Staff no later than August 31<sup>st</sup> of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission and with the Office of Regulatory Staff. The proper form for this report can be found at the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp). These "CLEC Service Quality Quarterly Reports" are required to be filed within 30 days of the end of each calendar quarter.

15. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit,

711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

16. For good cause shown, USAVR is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Practices rather than the Uniform System of Accounts method.

17. For good cause shown, USAVR is granted a waiver of the requirements that the Company publish and distribute a directory under 26 S.C. Code Ann. Reg. 103-631 (1976 and Supp. 2004). USAVR is ordered to contact the incumbent ILECs to ensure that USAVR's customers are included in the applicable directory. Further, for good cause shown, USAVR is granted a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976 and Supp. 2004).

18. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)



F

**Exhibit F**

**Snap Telecommunications, Inc.'s Interconnection Agreement with BellSouth**



# **BELLSOUTH® / CLEC Agreement**

***Customer Name: USA Video Relay, Inc.***

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**Resale Agreement**  
**Between**  
**BellSouth Telecommunications, Inc.**  
**And**  
**USA Video Relay, Inc.**

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## **AGREEMENT GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and USA Video Relay, Inc. (USA Video Relay), a South Carolina corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or USA Video Relay or both as a "Party" or "Parties."

### **W I T N E S S E T H**

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, USA Video Relay is or seeks to become a CLEC authorized to provide telecommunications services in the state South Carolina; and

**WHEREAS**, pursuant to Sections 251 and 252 of the Act; USA Video Relay wishes to purchase certain services from BellSouth; and

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and USA Video Relay agree as follows:

### **Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**Commission** is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

**Competitive Local Exchange Carrier (CLEC)** means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

**Effective Date** is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

**End User** means the ultimate user of the Telecommunications Service.

**FCC** means the Federal Communications Commission.

**Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Telecommunications Service** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telecommunications Act of 1996 (Act)** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

**1. CLEC Certification**

- 1.1 USA Video Relay agrees to provide BellSouth in writing USA Video Relay's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.
- 1.2 To the extent USA Video Relay is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, USA Video Relay may not purchase services hereunder in that state. USA Video Relay will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement and upon receipt thereof, USA Video Relay may thereafter purchase services pursuant to this Agreement in that state. BellSouth will file this Agreement with the appropriate Commission for approval.
- 1.3 Should USA Video Relay's certification in any state be rescinded or otherwise terminated, BellSouth may, at its election, terminate this Agreement immediately and all monies owed on all outstanding invoices shall become due, and BellSouth may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the initial term of this Agreement. USA Video Relay shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

**2. Term of the Agreement**

- 2.1 The initial term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state of South Carolina. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of the initial term of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.
- 2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. 252.
- 2.3.1 USA Video Relay may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with 2.3 above, then BellSouth may terminate this Agreement upon sixty (60) days notice to USA Video Relay. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to USA Video Relay pursuant to the rates, terms and conditions set forth in BellSouth's then current standard resale stand-alone agreement. In the event that BellSouth's standard resale stand-alone agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.
- 2.3.2 Notwithstanding Section 2.3 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.2 above and BellSouth is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month to month basis but shall be deemed terminated as of the expiration date hereof.
- 2.4 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of BellSouth's facilities or service, abuse of BellSouth's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due.

- 2.5 If, at any time during the term of this Agreement, BellSouth is unable to contact USA Video Relay pursuant to the Notices provision hereof or any other contact information provided by USA Video Relay under this Agreement, and there are no active services being provisioned under this Agreement, then BellSouth may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to USA Video Relay pursuant to the Notices section hereof.

**3. Parity**

When USA Video Relay purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to others, including its End Users.

**4 Court Ordered Requests for Call Detail Records and Other Subscriber Information**

- 4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for USA Video Relay, or, if applicable under this Agreement, switching, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to USA Video Relay End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for USA Video Relay End Users for the same length of time it maintains such information for its own End Users.

- 4.2 Subpoenas Directed to USA Video Relay. Where BellSouth is providing resold services to USA Video Relay, or, if applicable under this Agreement, switching, then USA Video Relay agrees that in those cases where USA Video Relay receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to USA Video Relay End Users, and where USA Video Relay does not have the requested information, USA Video Relay will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 4.1 above.

- 4.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

**5 Liability and Indemnification**

- 5.1 USA Video Relay Liability. In the event that USA Video Relay consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using



USA Video Relay's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of USA Video Relay under this Agreement.

- 5.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to USA Video Relay for any act or omission of another entity providing any services to USA Video Relay.
- 5.3 Limitation of Liability. Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services or functions not performed or improperly performed. Any amounts paid to USA Video Relay pursuant to Attachment 4 hereof shall be credited against any damages otherwise payable to USA Video Relay pursuant to this Agreement.
- 5.3.1 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall, except to the extent caused by the other Party's gross negligence or willful misconduct, indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.
- 5.3.2 Neither BellSouth nor USA Video Relay shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 5.3.3 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or